

THE HONORABLE DAVID G. ESTUDILLO

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GAVEN PICCIANO,

Plaintiff,

v.

CLARK COUNTY, CLARK COUNTY JAIL,  
WELLPATH, LLC, and NAPHCARE, INC.,

Defendants.

No. 3:20-cv-06106-DGE

**DEFENDANT NAPHCARE, INC.'S  
MOTION TO EXCLUDE  
PLAINTIFF'S EXPERTS**

NOTE ON MOTION CALENDAR:  
AUGUST 11, 2023

ORAL ARGUMENT REQUESTED

NAPHCARE, INC.'S MOTION TO EXCLUDE  
PLAINTIFF'S EXPERTS  
(No. 3:20-cv-06106-DGE)

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## I. INTRODUCTION

Plaintiff Gaven Picciano, who claims to have celiac disease, alleges that Wellpath, LLC, NaphCare, Inc., and Clark County Jail deprived him of a gluten-free diet while incarcerated at the Jail. To prevail on his negligence and 42 U.S.C. Section 1983 claims against NaphCare, Picciano must prove, among other things, that a NaphCare policy gave rise to a pattern of constitutional violations of the standard of care for jail medical service providers. And to prevail on his claim under Section 504 of the Rehabilitation Act, Picciano must prove, as relevant to this motion, that his alleged celiac disease is a “disability” that substantially alters his life activities). And to prevail on any claims, Picciano must prove that he suffered damages.<sup>1</sup>

Picciano hired Isabel Hujoel, M.D. to opine that Picciano has celiac disease and was injured from his stay at the Jail. He hired Mitchel Holliday, Ed.D. to opine that the defendants violated the standard of care.

Neither expert is qualified to give those opinions under the rigorous standard set by *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). Dr. Hujoel is a physician, with virtually no experience in a correctional setting, and is not qualified to render any opinion on damages. And Dr. Holliday’s work as a prison dietician does not come close to validating his conclusion that all three defendants somehow breached some unspecified standard of care.

The Court must exclude both experts for additional reasons. Dr. Hujoel opined that Picciano has seronegative celiac disease, without administering *any* tests to validate that conclusion. And Dr. Holliday’s opinion—that NaphCare and Wellpath should have entered an “interim” order for a gluten-free diet before confirming Picciano’s alleged diagnosis—directly contradicts guidance that Dr. Holliday provided to the Federal Bureau of Prisons *expressly*

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<sup>1</sup> Picciano must satisfy additional elements to prevail on his negligence, Section 1983, and Rehabilitation Act claims, including that an unconstitutional NaphCare policy caused his damages, that he is qualified to receive benefits under the Rehabilitation Act, and that NaphCare is a recipient of federal subsidies. As explained in NaphCare’s pending motion for judgment on the pleadings, Picciano cannot satisfy any of these elements.

1 *prohibiting* prison staff from approving special diets before confirming an inmate’s food allergy.  
 2 Dr. Holliday’s inconsistent, vague, and unfounded opinion will not remotely help the trier of fact.

3 For these reasons, the Court must exclude both experts’ proposed testimony as unreliable,  
 4 speculative, contradictory, and lacking the “intellectual rigor” required by Rule 702. *Kumho Tire*  
 5 *Co. v. Carmichael*, 526 U.S. 137, 152 (1999).

## 6 II. STATEMENT OF FACTS

### 7 A. Picciano receives an unsubstantiated celiac disease diagnosis.

8 In May 2018, Picciano visited Marquette General Hospital for generalized gastrointestinal  
 9 problems. Picciano weighed 180 pounds. His providers administered an endoscopy, took a biopsy,  
 10 and conducted a blood test. Although they concluded that Picciano had celiac disease, the results  
 11 of his visit were inconclusive for at least two reasons. First, Picciano did not undergo a follow-up  
 12 endoscopy and biopsies to confirm the accuracy of his initial diagnosis. Decl. of David A. Perez  
 13 (“Perez Decl.”), Ex. A (IME); *see also id.* Ex. B (Expert Report of Andrew Ross, the “Ross  
 14 Report”) at 1. Second, Picciano’s blood tests revealed no markers for celiac disease. *Id.*

15 Almost two years later, Picciano was booked into Clark County Jail. Picciano weighed 180  
 16 pounds—that is, exactly what he weighed in 2018. *Id.* Ex. C (Baraga County Memorial Hospital  
 17 Records) at BCMH 000034-35, 39, 41. He told a Wellpath nurse at screening that he had celiac  
 18 disease. *Id.* Ex. D (Intake Package) at NC000064. In accordance with Wellpath and Jail policy, the  
 19 nurse asked Picciano to release his medical records to confirm his diagnosis. Picciano refused on  
 20 the belief that he would “get[] out tomorrow.” *Id.* Ex. E (Receiving Screening) at NC000015.

21 Picciano did not “get out tomorrow,” and he began to submit demands to the Jail for a  
 22 gluten-free diet. *See, e.g., Id.* Ex. F (January 31, 2020 Inmate Request Slip) at NC000002. He  
 23 continued to refuse to release his medical records, leaving the Jail and Wellpath with few options  
 24 to satisfy Picciano’s demands. Wellpath ultimately advised Picciano to, and Picciano did, consume  
 25 items from the standard inmate meal that did not contain gluten. *Id.* Ex. G (Expert Report of  
 26 Kathryn J. Wild, the “Wild Report”) at 6. This is a common method used by people with celiac

1 disease. *Id.* Ex. H (Deposition of Thomas Fowlkes, the “Fowlkes Tr.”) at 64:5-21. Picciano also  
 2 purchased and consumed many items from the jail commissary, including M&Ms, Reese’s Peanut  
 3 Butter Cups, Skittles, Cheetos, and Doritos. *Id.* at 10. Picciano consumed these items without  
 4 incident, even though they contain at least trace amounts of gluten. Wild Report at 10.

5 **B. NaphCare promptly orders a gluten-free diet upon confirming Picciano’s diagnosis.**

6 NaphCare began providing medical services at Clark County Jail on February 1, 2020—  
 7 three days into Picciano’s incarceration. Although he refused to do so for the first five days of his  
 8 incarceration, Picciano finally signed a release of medical records on February 3. On February 5—  
 9 and in accordance with NaphCare and Jail policy—NaphCare reviewed, approved, and faxed the  
 10 release to Picciano’s outside provider, Marquette General. NaphCare received Picciano’s records  
 11 on February 6. A NaphCare licensed medical doctor reviewed the records, confirmed that Picciano  
 12 had been diagnosed with celiac disease in 2018, and, on February 8, approved a gluten-free diet to  
 13 begin on February 9. Perez Decl. Ex. I (Marquette General Medical Records) at NC000014.

14 **C. Picciano inexplicably experiences a “controlled fall.”**

15 The next day, Picciano had a “controlled fall” in his cell. NaphCare and the Jail guards  
 16 responded promptly and in accordance with Jail policy by administering Narcan, a commonly-  
 17 used emergency antidote for drug overdoses. When NaphCare attempted to take Picciano’s vitals,  
 18 Picciano resisted opening his eyes, demonstrating that he had not lost consciousness. *See* Perez  
 19 Decl., Ex. J (Legacy Salmon Health Records) at NC000043.

20 Picciano was transferred to Legacy Salmon Creek emergency department. After physically  
 21 examining Picciano and running blood tests, Legacy reported that his labs and vital signs were  
 22 “grossly normal,” and that he did not have any “acute infectious process or electrolyte  
 23 derangements” or “acute arrhythmia.” *Id.* In other words, Legacy found **nothing wrong** with  
 24 Picciano. They sent him back to the Jail the same day. *Id.* at NC000072.<sup>2</sup>

25  
 26 <sup>2</sup> The only irregularity noted was the possibility of “orthostatic syncope,” which is a change in blood pressure  
 due to a change in movement or position. *Id.* at NC000072.

**D. Picciano suffers no long-term harm.**

Picciano was released from the Jail on February 20, 2020. On February 25 and March 17, he visited PeaceHealth Fisher’s Landing Family Medicine, where he underwent labs, an endoscopy, and a biopsy. *Id.* Ex. K (PeaceHealth Medical Records) at PHV\_000023–26. Those examinations found mild inflammation in Picciano’s gastrointestinal system. *Id.* But they did not report any significant or long-term problems associated with Picciano’s stay at the Jail. Picciano’s weight was 176 pounds as of March 11, 2020. *Id.* Ex. L (The Vancouver Clinic Medical Records) at TVC000004–15. Thus, between his booking and release from Clark County Jail, **Picciano only lost four pounds.** *Id.* Such modest weight loss is common in a jail setting, where inmates do not have access to food all day. *Id.* Ex. M (Deposition of Alfred Joshua, the “Joshua Tr.”) at 125:3–126:10. Even at his lowest weight, Picciano had a healthy body mass index. *See id.* Ex. N (Expert Report of Alfred Joshua, the “Joshua Expert Report”) at 5; *id.* Ex. O (Deposition of Isabel A. Hujoel (“Hujoel Tr.”) at 49:10–19.

**III. ARGUMENT**

To be admissible, expert testimony must meet five requirements:

1. The expert offering testimony must be qualified “by knowledge, skill, experience, training, or education”;
2. “[T]he expert’s scientific, technical, or other specialized knowledge” must “help the trier of fact to understand the evidence or to determine a fact in issue”;
3. The testimony must be “based on sufficient facts or data”;
4. The testimony must be “the product of reliable principles and methods”; and
5. The expert must have “reliably applied the principles and methods to the facts of the case.”



1 Fed. R. Evid. 702. As the Supreme Court explained in *Daubert*, “The adjective ‘scientific’ implies  
 2 a grounding in the methods and procedures of science.” 509 U.S. 579, 590 (1993). “Similarly, the  
 3 word ‘knowledge’ connotes more than subjective belief or unsupported speculation.” *Id.*

4 Expert testimony need not “be ‘known’ to a certainty.” *Id.* But, critically, “an inference or  
 5 assertion must be derived by the scientific method.” *Id.* There must be “good grounds” for the  
 6 proposed testimony, “based on what is known.” *Id.* In short, there must be indicia of “evidentiary  
 7 reliability—that is, trustworthiness.” *Id.* The proponent of the expert testimony must prove that the  
 8 testimony meets these standards. *Id.* at 590 n.9 (emphasis omitted). *Lust By & Through Lust v.*  
 9 *Merrell Dow Pharms., Inc.*, 89 F.3d 594, 598 (9th Cir. 1996).

10 In *Daubert*, the Supreme Court “charged trial judges with the responsibility of acting as  
 11 gatekeepers” to enforce Rule 702 and “exclude unreliable expert testimony.” Fed. R. Evid. 702,  
 12 Advisory Comm. Note to 2000 Amendments. This “gatekeeping function requires more than  
 13 simply ‘taking the expert’s word for it.’” *Id.* (citing *Daubert v. Merrell Dow Pharms., Inc.*  
 14 *[Daubert II]*, 43 F.3d 1311, 1319 (9th Cir. 1995)). A district court cannot allow an expert to offer  
 15 opinions based on “unsubstantiated speculation and subjective beliefs.” *Diviero v. Uniroyal*  
 16 *Goodrich Tire Co.*, 114 F.3d 851, 853 (9th Cir. 1997).

17 \* \* \*

18 Picciano hired two experts to opine on his alleged disability (celiac disease), the damages  
 19 he allegedly suffered from his stay at the Jail, and the defendants’ alleged breach of the standards  
 20 of care. But neither expert is qualified to render these opinions, and both must be excluded for  
 21 additional reasons under *Daubert*.

1 **A. Dr. Isabel Hujoel – Gastroenterologist**

2 Dr. Hujoel has limited expertise in the field of medicine. She  
3 only recently became a resident physician at the University of  
4 Washington in 2021. Hujoel Tr. at 79:14-80:10. She has never worked  
5 in a jail or correctional facility, beyond spending one day at a jail while  
6 she was a medical student. *Id.* at 87:11-17; 87:25-88:5. She admitted  
7 that she “never practiced in emergency medicine” and that “it’s been a  
8 long time since [she] practiced in internal medicine.” *Id.* at 112:8-14.



9 She certainly is not an economist or accountant, and she admitted that she is not qualified to opine  
10 on damages. *Id.* at 46:10-21.

11 Dr. Hujoel nonetheless opines that Picciano has celiac disease, and that he suffered “acute  
12 injury and distress” from not receiving gluten-free meals. *See* Perez Decl. Ex. P (Expert Report of  
13 Isabel Hujoel, the “Hujoel Report”) at 10. As evidence of the distress, she relies on Picciano’s  
14 “controlled fall” at the Jail. *See id.* at 10-11.

15 **1. Dr. Hujoel is not qualified to render an opinion that**  
16 **Picciano suffered damages.**

17 As the gatekeepers under *Daubert*, courts routinely exclude opinions from doctors when  
18 they attempt to testify outside their field of expertise. *See, e.g., Montera v. Premier Nutrition*  
19 *Corp.*, 2022 WL 1225031, at \*9 (N.D. Cal. Apr. 26, 2022) (“Just because Dr. Silverman is  
20 qualified to testify about osteoporosis, bone health, and related issues does not mean he is qualified  
21 to testify on all other medical topics.”); *Laux v. Mentor Worldwide, LLC*, 295 F. Supp. 3d 1094,  
22 1098 (C.D. Cal. 2017) (excluding plastic surgeon’s opinion that plaintiff suffered from a biotoxin  
23 disease allegedly caused by mold in a breast implant), *aff’d*, 786 F. App’x 84 (9th Cir. 2019);  
24 *Cleveland ex rel. Cleveland v. United States*, 457 F.3d 397, 405 (5th Cir. 2006) (internist was not  
25 qualified to testify as expert as to the standard of care owed by emergency room physicians, even  
26 if internist was qualified to testify as to appropriate standard of care for diagnosing congestive

heart failure); *Thomas v. Sheahan*, 514 F. Supp. 2d 1083, 1093 (N.D. Ill. 2007) (holding that a physician who was not an expert on meningitis or infectious diseases could not testify as to the manifestations of meningitis).

Dr. Hujoel stretches far beyond her limited expertise as a gastroenterologist. Her opinions concern the damages Picciano claims to have suffered while housed at Clark County Jail. But as a physician, rather than an economist or an accountant, Dr. Hujoel has no expertise to opine on Picciano's damages. The doctor herself has admitted that she is not qualified to evaluate damages. Hujoel Tr. at 46:10-21. The Court therefore should exclude those opinions of Dr. Hujoel regarding any damages that Picciano suffered.

There are additional reasons why the Court should exclude Dr. Hujoel's "damages" opinions. She bases them on NaphCare's emergency response to Picciano's "controlled fall," even though Dr. Hujoel has no experience in emergency department care (Hujoel Tr. at 112:8-14) or in a correctional setting (*id.* at 87:11-17; 87:25-88:5). And Dr. Hujoel followed no scientific methodology in concluding that Picciano suffered "acute injury and distress." This is evidenced by not only the dearth of any methodological recitations or literature that Dr. Hujoel cites in support of her opinion, but also inconsistencies in her opinion: On one hand, Dr. Hujoel relies on the fall as evidence of "acute injury and distress." *See* Hujoel Report at 10. On the other, Dr. Hujoel admits that, after Picciano's fall, his vital signs, laboratory results, and electrolyte readings were completely normal. Hujoel Tr. at 24:6-15. She likewise agreed that Picciano's four-pound weight loss "would not necessarily trigger fire alarms." *Id.* at 44:18-23. And she testified that she sees no evidence that Picciano suffered long-term harm, including cancer risk. *Id.* at 99:24-100:5. In other words, Dr. Hujoel's testimony jibes with the emergency department's conclusion **that there was nothing wrong with Picciano** during his incarceration. *Id.* at 20:21-25. But her "acute distress" opinion contradicts that testimony and evidence. For these reasons, the Court should exclude Dr. Hujoel's opinion that Picciano's "controlled fall" demonstrates "acute injury and distress."

1           **2. Dr. Hujoel did not follow any scientific methodology in opining**  
 2           **that Picciano has celiac disease.**

3           Courts only admit expert testimony based in methodology that “is rigorously scrutinized  
 4           and verified.” *Cooper v. Brown*, 510 F.3d 870, 946 (9th Cir. 2007) (explaining that “only methods  
 5           tested and subsequently accepted by the scientific community are methods on which the courts  
 6           should rely”); *see also* Fed. R. Evid. 702(c) (requiring expert opinions to be “the product of reliable  
 7           principles and methods”).

8           Dr. Hujoel opines that Picciano’s “acute injury and distress” stems from his celiac disease.  
 9           *See* Hujoel Report at 10-11. But in reaching that conclusion, Dr. Hujoel fails to follow the  
 10          methodologies outlined in her own report that are required to confirm celiac disease—specifically,  
 11          taking a blood test for celiac disease markers, taking small-bowel biopsies, and administering a  
 12          gluten challenge prior to an upper endoscopy. Hujoel Report at 4–5. These procedures are critical  
 13          to validate a celiac disease diagnosis because, as Dr. Hujoel herself notes, that “diagnosis can be  
 14          challenging and cannot be done based on history and physical exam alone.” *Id.* at 5.

15          Dr. Hujoel inexplicably declined to follow any of these procedures. She did not, for  
 16          instance, administer a “gluten challenge,” which involves assessing the effects when a patient  
 17          consumes certain amounts of gluten over a certain period. *See id.* at 5, 10. Dr. Hujoel instead  
 18          merely interviewed Picciano by Zoom for an hour, believing that was enough to confirm a  
 19          condition (seronegative celiac disease) experienced by only 5-15% of all patients with celiac  
 20          disease. *Id.* at 5; Hujoel Tr. at 12:11-13:9.<sup>3</sup>

21          Beyond failing to independently verify Picciano’s celiac disease, Dr. Hujoel further errs by  
 22          ignoring evidence suggesting a contrary diagnosis. For instance, Dr. Hujoel does not wrangle with  
 23          the fact that in 2018, Picciano’s blood tests showed no markers for celiac disease. Hujoel Report  
 24          at 8, 10. Rather than engaging with this issue, Dr. Hujoel simply claims that Picciano suffers from  
 25          an exceedingly rare condition called seronegative celiac disease. *Id.* at 8; Hujoel Tr. at 85:5-17. In

26          

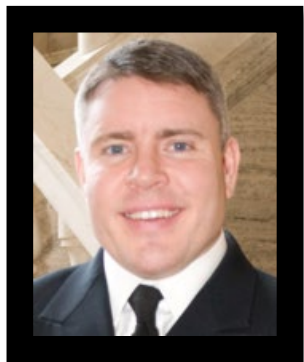
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<sup>3</sup> As Dr. Hujoel has acknowledged, Picciano himself likewise failed to take any steps to verify his 2018  
 diagnosis.

reflexively reaching this conclusion, Dr. Hujoel fails to consider myriad alternative diagnoses, including other types of gluten sensitivity.

Because Dr. Hujoel did not follow any scientific methodology for diagnosing seronegative celiac disease, she should not be allowed to opine that Picciano had celiac disease.

## **B. Dr. Holliday – Registered Dietician**



Dr. Holliday is the Chief Dietician Officer of the United States Public Health Service. He has experience as a dietician, but he is not a medical doctor, nurse, or medical provider of any kind. Perez Decl. Ex. Q (Deposition of Mitchell Holliday, the “Holliday Tr.”) at 200:9-201:3. He has no medical training and has no medical licenses. *See id.* at 201:1-6. Thus, Dr. Holliday is a “doctor” only in the sense that he holds a Doctorate of Education. *Id.* at 69:9-16. He cannot render a diagnosis. *Id.* at 71:21-72:2. And he cannot write a medical prescription. *Id.* at 169:12-23. In his capacity as a prison dietician, his authority is limited to *recommending—not prescribing*—certain diets for inmates. *Id.* at 246:9-16. The ultimate decision of whether to prescribe a medical diet falls squarely within the hands of jail medical service providers.

Dr. Holliday criticizes NaphCare and Wellpath for their decision to confirm Picciano’s *medical diagnosis* (celiac disease) before *prescribing* a gluten-free diet. *See* Perez Decl. Ex. R (Expert Report of Mitchell Holliday, the “Holliday Report”) at 9. He concludes that, by refusing to immediately prescribe Picciano a gluten-free diet, NaphCare and Wellpath violated the standard of care. *See id.* The Court must exclude this opinion for multiple reasons.

### **1. Dr. Holliday is not qualified to opine that NaphCare violated the standard of care.**

In order to meet the test of admissibility, an expert must opine on issues within their field of expertise. *See, e.g., Montera v. Premier Nutrition Corp.*, 2022 WL 1225031, at \*9. By opining

1 on whether two jail medical service providers complied with the standard of care, Dr. Holliday far  
2 exceeds his experience, training, and qualifications as a prison dietician.

3 That is primarily because Dr. Holliday is not a medical doctor, nurse, or provider; is not  
4 qualified to render a diagnosis; and is not qualified to render a medical prescription. *See* Holliday  
5 Tr. at 69:9-16; 71:21-72:2. That is also because Dr. Holliday has no certifications or other  
6 qualifications that would allow him to interpret, apply, or opine on the standards set by the National  
7 Commission of Correctional Health Care (“NCCHC”) and the American Correctional Association  
8 (“ACA”), Holliday Tr. at 69:7-19, 69:21-70:12, on which Dr. Holliday exclusively bases his  
9 opinions, *see* Holliday Report at 3-5. And he has never audited a jail medical services provider to  
10 ensure they complied these standards. Holliday Tr. at 109:19-110:8.

11 Perhaps because of his lack of his education, training, experience, and qualifications, Dr.  
12 Holliday himself agrees that he is not qualified to opine on the standard of care for nurses or  
13 physicians, like those NaphCare employs at Clark County Jail:

14 Q. Do you believe you’re qualified to express an opinion on what  
15 the standard of care is in Washington for a registered nurse?

16 A. No.

17 Q. Same question. Do you think you’re qualified to express what the  
18 standard of care is for a physician in the State of Washington?

19 A. I believe that would be better suited for other experts in this case.

20 Holliday Tr. 201:14-22.

21 Dr. Holliday nevertheless boldly proclaims that NaphCare and Wellpath violated the  
22 standard of care by failing to immediately prescribe Picciano a gluten-free diet, even before they  
23 could confirm that such diet was medically indicated. *See* Holliday Report at 8. Because Dr.  
24 Holliday has no education, training, experience, or qualifications that would allow him to criticize  
25 a jail medical service provider’s diet prescription, the Court should exclude his opinions.  
26

2. **Dr. Holliday’s opinions are not supported by facts, data, or reliable principles or methods.**

To be admissible, expert opinions must be reliable—i.e., “based on sufficient facts or data” and be “the product of reliable principles and methods.” Fed. R. Evid. 702. An expert opinion can be neither of these things if that opinion contradicts the same expert’s prior statements. *See, e.g., Snyder v. Bank of Am., N.A.*, 2020 WL 6462400, at \*6 (N.D. Cal. Nov. 3, 2020) (holding that expert’s opinion was “unreliable” and “incomprehensible” where the expert’s 2018 opinion contradicted his 2016 opinion on property values); *Schoen v. State Farm Fire & Cas. Co.*, 2022 WL 16579767, at \*3-4 (S.D. Ala. Nov. 1, 2022) (excluding affidavit testimony that directly contradicted deposition testimony).

One of the most concerning issues with Dr. Holliday’s opinions is that they are squarely contradicted by his own guidance to the Federal Bureau of Prisons. In 2017, Dr. Holliday served as the “primary author” for a Bureau of Prisons “Management of Food Allergies” manual. Holliday Tr. at 134:8-14. Dr. Holliday cited that very manual in his expert report in this case. *See* Holliday Report at 8. The manual expressly *prohibits* ordering special diets for inmates until their food allergies are confirmed, as excerpted below. *See* Holliday Tr. at 154:3-15; Perez Decl. Ex. S (“2017 Bureau of Prison Report”) at 5.

**SPECIAL DIET ORDERS**

**A Special Diet should not be considered for allergic avoidance, unless:**

- The food allergy is reported for fruit.
- The individual has a confirmed diagnosis of allergy to baked egg, wheat, or milk, or a confirmed diagnosis of multiple-food allergies.

Dr. Holliday criticizes NaphCare and Wellpath for failing to enter a special diet order before Picciano’s celiac disease diagnosis was confirmed. *See* Holliday Tr. at 132:21-133:4. That opinion directly contradicts Dr. Holliday’s own prior guidance. Dr. Holliday had multiple opportunities at deposition to explain the inconsistency. He testified that the guidance does not apply to the Jail because its “food offerings” may be different from those at the Bureau of Prisons, but he also admitted that he did not know that for sure because he never examined the Jail’s menu.



1 *Id.* at 159:23-160:4. Nor could Dr. Holliday explain how different food offerings would impact  
 2 the relevance of his Bureau of Prisons guidance. *Id.* at 160:5-15. Dr. Holliday’s opinions therefore  
 3 are unreliable and must be excluded.

4 **3. Dr. Holliday offers no opinions that will assist the trier of fact.**

5 An expert’s testimony is only admissible if that opinion will assist the trier of fact. Fed. R.  
 6 Evid. 702; *Chesebrough-Pond’s, Inc. v. Faberge, Inc.*, 666 F.2d 393 n.3 (9th Cir. 1982) (“When  
 7 opinions are excluded, it is because they are unhelpful and therefore superfluous and a waste of  
 8 time”); *Wade v. BP Expl. & Prod., Inc.*, 630 F. Supp. 3d 776 (E.D. La. 2022), *reconsideration*  
 9 *denied*, 2022 WL 17045863, at \*10 (E.D. La. Nov. 17, 2022) (holding expert testimony as  
 10 inadmissible because they were unhelpful for determining causation). Thus, expert testimony “fails  
 11 to ‘help’ where the reasoning behind that testimony is so illogical,” “confusing,” “misleading,” or  
 12 “ambiguous” that it “cannot affect the probabilities of the existence of facts at issue.” 29 Victor J.  
 13 Gold, *Federal Practice & Procedure: Evidence* § 6265.2 (2d ed. 2023).

14 Dr. Holliday’s opinions suffer from all these problems. They are illogical, confusing, and  
 15 misleading, because they contradict Dr. Holliday’s own guidance. *See* 2017 Bureau of Prison  
 16 Report at 5. Moreover, Dr. Holliday’s opinions are ambiguous, vague, and conclusory. In  
 17 deposition, **Dr. Holliday could not even say what parts of his report constitute “opinions” to**  
 18 **a reasonable degree of certainty**, versus what parts merely regurgitate assumptions. *See, e.g.*,  
 19 Holliday Tr. at 194:2-23.

20 There are additional problems. In particular, Dr. Holliday’s report lumps all three  
 21 defendants together, and concludes that all three defendants violated some unspecified standard of  
 22 care, without explaining what standard of care applies to each defendant. This is problematic,  
 23 because it is well-settled that specific standards of care apply to different actors in a jail medical  
 24 setting. *See supra* at 6-7. Dr. Holliday similarly refused to explain what *NaphCare*, versus  
 25 Wellpath, versus Clark County Jail, did or failed to do that breached the standard of care. He said  
 26 that he “didn’t view it was my opinion to establish fault by any specific defendant.” Holliday Tr.



1 at 119:18-120:5. And Dr. Holliday repeatedly declined to distinguish among defendants, instead  
 2 purporting to provide opinions on defendants “plural.” *See, e.g., id.* at 189:3-8.

3 What’s more, Dr. Holliday has refused to clarify what sources serve the basis for his  
 4 amorphous standard of care. His report heavily quotes standards from the NCCHC and the ACA—  
 5 standards that apply to correctional facilities, and even then, only to the extent those facilities elect  
 6 to obtain and maintain NCCHC and ACA accreditation. Holliday Report at 4, 7. Dr. Holliday did  
 7 not explain—either in his report or deposition—whether and, if so, how those standards inform  
 8 the standard of care for jail medical service providers. In deposition, Dr. Holliday contradicted his  
 9 own report by suggesting that he is not relying on those standards after all. *See, e.g.,* Holliday Tr.  
 10 at 189:14-18 (Q: “So you’re not relying on the ACA standards?” A. “No, this is based off of the  
 11 recommended management for celiac disease in general.”).

12 Dr. Holliday himself all but concedes that his opinions in this case will do nothing to assist  
 13 the trier of fact. In deposition, when he was unable to answer questions regarding his opinions, he  
 14 retreated and said that the Court, not himself, should decide these issues. *See id.* at 107:22-108:3  
 15 (testifying that it is “up to the Court to decide” the relevance of ACA standards to this case); 113:4-  
 16 6 (“I feel that it’s up to the Court to decide if NaphCare specifically is at fault in any area.”); 120:3-  
 17 14 (“[I]n my view it was going -- it’s the determination of the Court to determine” ... “fault by  
 18 any specific defendant.”); *see also id.* at 193:19-195:2 (testifying that “it would be up to the Court”  
 19 to decide what parts of Dr. Holliday’s report contains opinions versus facts). NaphCare agrees; Dr.  
 20 Holliday’s opinions will not assist the trier of fact and must be excluded.

#### 21 IV. CONCLUSION

22 The Court should exclude Dr. Hujoel’s opinions regarding damages and Picciano’s alleged  
 23 celiac disease, and Dr. Holliday’s opinions regarding the standard of care.

1 *I certify that this brief contains 4,188 words,*  
2 *in compliance with the Local Civil Rules.*

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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury that on July 27, 2023, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to the email addresses indicated on the Court's Electronic Mail Notice List.

Dated: July 27, 2023

s/ David A. Perez  
David A. Perez